IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5811 of 1994
with
SPECIAL CIVIL APPLICATION No 5903 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R. TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

B R SHAH

Versus

GUJ.IND.INVESTMENT CORPN.LTD.

Appearance:

1. Special Civil Application No. 5811 of 1994
MR AJAY R MEHTA for Petitioners
MR BP TANNA for Respondent No. 1
Mr.Digant P. Joshi, ASSTT GOVERNMENT PLEADER for Respondent No. 2

2. Special Civil ApplicationNo 5903 of 1994
MS MEGHA JANI for Petitioners nos.1 to 4.
Petitioner no.5 is deleted.
MR BP TANNA for Respondent No. 1
Mr.Digant P. Joshi, ASSTT GOVT. PLEADER for Respondent No. 2

CORAM : MR.JUSTICE RAVI R. TRIPATHI

Date of decision: 17/03/2001

COMMON C.A.V. JUDGEMENT

In Special Civil Application No.5903 of 1994, it was given out during the course of the arguments that petitioner no.3, Shri B.J. Patel has expired in 1994 and that petitioner no.5 stands deleted as per order dated 1.3.2000.

2. These two petitions were filed by various petitioners who are serving with the respondent Gujarat Industrial Investment Corporation Limited ("the Corporation" for brevity). The grievance of the petitioners is that the Corporation had invited offers for Voluntary Retirement Scheme ("the scheme " for brevity) in the month of January 1994. In response thereto the present petitions had offered for the same and the respondent Corporation accepted the said offers on 8.2.1994 unconditionally. The grievance of the petitioners is that after having accepted the offers of the petitioners on 15.4.1994, the respondent Corporation intimated the petitioners that in modification of letter dated 8.2.1994, the signatory of the letter is directed to inform the petitioners that the scheme has been taken under review by the Government. Thus, the scheme is under abeyance and therefore, the application of the petitioners will be considered as and when the Corporation receives further communication from the Government.

3. Being aggrieved of this communication the petitioners filed these petitions challenging the same on various grounds, such as, the management has no reason to withdraw the scheme as there is no provision to that effect in Officer Order No.340 dated 2.11.1993, whereby the scheme was offered or in the acceptance letter dated 8.2.1994, copies of which are produced at Annexure 'B' & 'C' to Special Civil Application NO./5811 of 1994. IT was also contended that the review, if at all can be made, the same could have been only that of future cases. It was also submitted that in case of the petitioners the contract was already completed and therefore, there is no question of now intimating the petitioners that, "the applications of the petitioners will be considered as and when the Corporation receives further communication from the Government". It was also contended that the present action of the respondent Corporation amounts to altering of the scheme with retrospective effect. The petitioners also contended that the respondent Corporation is estopped from altering the scheme inasmuch as the petitioners have already acted upon the acceptance of

their offer by the respondent Corporation. The petitioners also contended that the Corporation is acting arbitrarily in the matter inasmuch as three other employees whose names are set out in para 5 of the Special Civil Application No.5811 of 1994, namely,

(i) Shri A.B. Shah, Manager (Engg.),
(ii) Smt. H.S. Nair, Manager, and
(iii) Shri T.T. Patel, Sr. Manager (OR)

had also opted for the scheme before 31.1.1994. They were also issued acceptance of their applications identical to that of the petitioners dated 8.2.1994. Thereafter, these employees intimated to the management in writing that they wanted to continue in service of the respondent Corporation. They were intimated by the respondent Corporation that the management has not accepted their request to opt out of the scheme and has issued similar letters like Annexure 'a' dated 15.4.1994 informing that their requests are kept in abeyance.

4. The petition was amended on 15.7.1995 adding fresh grounds of challenge and placing on record the later developments in the matter. At the initial stage, the State Government was not a party, but thereafter the State of Gujarat, through the Secretary, Finance Department was joined as a party respondent. The respondent Corporation filed its reply affirmed by Shri K.A. Trivedi, Corporate Law Officer of the respondent Corporation on 27.4.1994. It was contended in the affidavit in reply that the petition is required to be rejected on the ground of non joinder of necessary party as the petitioners though aware of the fact that, it is the Government policy regarding Voluntary Retirement Scheme which is extended with the approval of the Government and that it is the Government who has taken its policy decision under review. In light of that though the Government was a necessary party, the same was not joined as a party and therefore, the petition suffers from non joinder of necessary party (however, as mentioned hereinabove at the later stage, the Government was jointed as a party respondent). The affidavit in reply further proceeds to contend that the respondent Corporation is not "State" within the meaning of Article 12 of the Constitution of India and that in the petition no material is set out to contend that the respondent Corporation is "State" within the meaning of Article 12 of the Constitution. The affidavit in reply then proceeds to contest the petition on the ground that the petitioners are not able to show any legal or fundamental right in their favour and that the doctrine of promissory

estoppel will not be applicable inasmuch as the petitioners were aware of the fact that the Government is the competent authority to approve the scheme and they were aware and informed that any scheme regarding Voluntary Retirement Scheme would be subject to the approval of the State Government. It was also submitted that the principles laid down by the Honourable Supreme Court of India and the High Court regarding the doctrine of promissory estoppel are not applicable to the fact and circumstances of the present case. It was also submitted that the petitioners have not shown as to how the petitioners have put themselves into a disadvantageous position. As one of the main contention raised in the affidavit in reply, is that the Government of Gujarat had communicated to the respondent Corporation that the scheme was made applicable to loss making organisations, and not to profit making organisations like, GIIC. It is also stated in the affidavit in reply that in view of the above letter of the Government the matter would have ended against the petitioners. But the Managing Director of the Corporation addressed a letter to the Government pointing out the progress which had taken place and requested the Government to reconsider the entire matter and approve the steps taken by the Corporation and allow the Corporation to proceed further. It is also stated that if the Government approves the request made by the Managing Director vide his communication dated 6.4.1994, the respondent Corporation cannot have any objection to proceed further.

5. The petitioners had refuted the submissions made by the deponent on behalf of the respondent Corporation in the affidavit in reply by filing an affidavit in rejoinder and it was contended that the Government is not a necessary party and the consultation process, if any, between the respondent Corporation and the Government is there, it is only their internal decision making mechanism. It was also contended that the respondent Corporation could have adopted any other Voluntary Retirement Scheme and it is the choice and privilege of the respondent Corporation to select any policy from any of the sources. It was also contended that as the period of 90 days mentioned in Office Order no.340 dated 2.11.1993 (Annexure 'B') is already over, any review which the Government may undertake cannot have any bearing on the scheme. It was also contended that the Government Circular did not place any ban on the Voluntary Retirement Scheme being made applicable to the profit making organisations also.

6. In reply to this affidavit in rejoinder, an

affidavit in sur rejoinder was filed on behalf of the respondent Corporation adopting the affidavit in sur rejoinder filed in Special Civil Application No.5903 of 1994. In the affidavit in sur rejoinder it was pointed out by the Corporation that the respondent Corporation has no objection, if the Government reviews its decision and decides to grant permission to GIIC, but if the Government says no then, the petitioners are bound by the said decision of the Government in light of the provisions of Clause 188A of the Articles of Association of GIIC. The provisions of Clause 188A of Articles of Association are produced in the said sur rejoinder, which are produced hereinbelow for ready reference :

"188A Notwithstanding anything contained in any of these Articles, the Govt. of Gujarat, may from time to time, issue such directions or instructions as it may consider necessary in regard to the finances and business affairs of the company and in like manner may vary and annul any such directions or instructions. The company and its Directors shall duly comply with and give immediate effect to the directions or instruction so issued. In particular, the Govt. of Gujarat shall have powers:

(a) to call for such returns, accounts and other information with respect to property and activities of the company as may be required from time to time.

(b) to approve the Company's Five Year and Annual Plans to Development and the Capital Budget.

(c) to approve appointments, extensions in service and reemployment in the higher categories of posts in a grade of Rs.2500/- and above of those who have already attained age of 58 years, whether they be from private or public sector."

7. It is also submitted in the said sur rejoinder that the provisions of clause 188A were known to all the officers including the petitioners and that in light of that all the conditions of service of the employees are required to be approved by the Govt. It is also submitted that clause 3 of the application made by the petitioners for Voluntary Retirement Scheme reads as under:

"I have also noted that right to accept or refuse my application for voluntary retirement shall vest inter alia with the management."

In Circular of the Govt. dated 2.11.1993 which is produced on record at page 18A, clause (ii) of para 1 specifically provided that,

"The management of the enterprise will have the right not to grant voluntary retirement for reasons to be recorded in writing."

In view of this position it was submitted that the petitions require to be rejected and no reliefs much less interim relief requires to be granted.

8. Para 3 of the Govt. circular dated 2.11.1993 reads as under:

"3. If any Voluntary Retirement Scheme prevalent in any Public Sector Enterprise before the issue of these orders has been implement with the approval by the Government, it will continue in its present form. .. .."

From this it is clear that if earlier, the scheme was to be implemented with the approval by the Govt., the present scheme can also be implemented only with the approval by the Govt. There is much force in the submission made by learned counsel appearing for the respondent Corporation that the scheme was to be made applicable only to loss making organisations and not to the units which are profit making. The circular of the Govt. did provide in subclause (ii) of para 1 that,

"(ii) The management of the enterprise will have the right not to grant voluntary retirement for reasons to be recorded in writing."

Besides this a perusal of the provisions of clause 188A of the Articles of Association makes it clear that the Govt. of Gujarat has right/ power to issue such directions or instructions as it may consider necessary in regard to finance and business affairs of the company. Clause 188A proceeds further to provide that,

".. .. in like manner may vary and annul any such directions or instructions. .."

What is important is, that clause 188A of the Articles of Association cast duty on the company and its directors to

comply with and give immediate effect to the directions and instructions issued by the Government. The clause then provides specific instances in which the Govt. will have power to issue such directions or instructions.

9. Office Order No.340 dated 2.11.1993, produced at Annexure 'B' does invite offers by announcing Voluntary Retirement Scheme for the employees of the Corporation as per the guidelines mentioned in the Government Circular No.JNV-- 1693-- 1794-- A dated 2.9.1993. Assuming that pursuant to that the petitioners had submitted their offers and that the same were accepted by the respondent Corporation by its letter dated 8.2.1994, a copy of which is produced at Annexure 'C', by saying that,

> ".. .. the management has decided to accept your request and relieve you from the services of the Corporation. .. "

was not absolute and cannot be absolute in view of the provisions of clause 188A of the Articles of Association. In the acceptance letter dated 8.2.1994, details were to be worked out about the date of relief and also about compensation payable to the employee concerned and it cannot be interpreted in the manner in which it is suggested by learned advocate appearing for the petitioners. According to him the same is conclusive so as to foreclose the option of the corporation and the scheme was to be implemented.

10. On the one hand it is the case of the petitioners that the respondent, GIIC is wholly a Government owned company and under the Articles of Association, the Chairman and other members of the Board of Directors shall be appointed by the Government and that the Chairman and the members appointed shall have to cease to hold office any time at the discretion of the Government; that under Articles of Association the State Govt. may appoint one or more managing directors or full time directors for such period or such term as it may deem fit; that the office of the Director shall become vacant if the Govt. of Gujarat terminates his appointment. On the other hand it is agitated on behalf of the petitioners that the respondent Corporation could have adopted any other Voluntary Retirement Scheme and it is the choice and approval of the corporation to select any policy from any other sources. While raising this contention the contents of clause 188A of the Articles of Association of the Corporation is lost sight of. If the Corporation is to carry out directions or instructions issued by the Government of Gujarat from time to time in

regard to finance and business affairs of the company, the scheme offered by the Corporation by Office Order No.340 dated 2.11.1993 could not have been without a rider of being subject to approval by the Government of Gujarat.

11. In view of the aforesaid discussion, no relief as prayed for can be granted to the petitioners, similarly no directions as prayed for to direct the respondent Corporation to honour its commitment to permit the petitioners to leave with full compensation under the Voluntary Retirement Scheme as accepted by the Corporation on 8.2.1994 can be granted.

12. In the result both the Special Civil Applications fail. Dismissed accordingly. Rule is discharged. No order as to costs.

(Ravi R. Tripathi, J.)

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